

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**JACY KELLEY and
LAURA KELLEY, Husband and Wife**

Plaintiffs
vs. **Civil Action No.: 1:08cv31**

UNITED STATES OF AMERICA, et. al.

Defendants

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE

COME NOW, the Plaintiffs Jacy and Laura Kelley, by counsel, and state the following in support of their motion to consolidate this action with the companion case that is also currently pending before this Court as Laura Kelley v. United States of America, et. al., 1:08cv32.

FACTS AND AUTHORITY

This action is brought jointly by Laura and Jacy Kelley, as husband and wife, to recover for consortium damages that resulted from the injuries suffered by Plaintiff Laura Kelley in a plane crash that occurred on February 22, 2006. Laura Kelley has a companion suit pending before this Court as Laura Kelley v. United States of America, et. al., 1:08cv32 (the “Injury Case”) which seeks to recover for her personal injuries and other personal damages she suffered in the crash. With the exception of Plaintiff’s husband, Jacy Kelley, who is joined as a plaintiff in the consortium claim, all parties in the two suits are identical and the injuries suffered by Laura Kelley that give rise to both claims are likewise identical.

Both the Injury Case and this consortium claim are based on identical allegations of negligent acts and omission by the defendants that caused the crash. Both claims involve substantially similar parties and have nearly identical, common questions of law and fact.

Rule 42(a) of the Federal Rules of Civil Procedure provides for the consolidation of separate actions pending before the Court when the actions involve a common question of law or fact. In accordance with Maryland law, which gives rise to the consortium claim herein, the claim of husband and wife for damages to the marital unit when injuries are suffered by one spouse must be filed separately, but in conjunction with, the personal injury suit by the injured spouse. Deems v. Western Maryland Railway Co. 241 Md.95, 115; 231 A.2d 514,525 (1966). Further, Maryland law provides that the consortium claim must be tried at the same time as the individual action of the physically injured spouse in order to avoid duplicative or conflicting results. *Id.*

The two matters at issue herein have predominantly identical questions of law and fact, at least with respect to the underlying negligence claims and the nature of the injuries suffered by Laura Kelley. Consolidation of these two matters for the purposes of discovery, pretrial matters and trial will avoid duplicative litigation, potentially conflicting rulings, and unnecessary expense and delay for all parties. Consolidation will also best preserve judicial economy given the related and derivative nature of the two actions. Consolidation is permitted under the Federal Rules, supported given the nature of the two actions at issue and mandated by the substantive law of Maryland that governs the claims.

WHEREFORE, Plaintiffs respectfully request the Court order this matter to be consolidated with the companion case pending as Laura Kelley v. United States of America, et al. 1:08cv32 for the purposes of discovery, pre-trial matters and trial.

Respectfully Submitted
JACY AND LAURA KELLEY,
By Counsel

/s/

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CERTIFICATE

I hereby certify that on this 6th day of May, 2008, a true and accurate copy of the foregoing Plaintiffs' Memorandum in Support of Motion to Consolidate was filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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